BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	**)**	
	)	
Modernizing the E-rate Program for	**)**	**WC Docket No. 13-184**
Schools and Libraries	**)**	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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SUMMARY

USTelecom agrees that the challenge we face today is to modernize the E-Rate program to ensure that our nation's students and communities have access to high-capacity broadband connections that support digital learning while making sure that the program remains fiscally responsible and fair to the consumers and businesses that pay into the universal service fund. The Commission's proposed reforms to the E-Rate program follow similar modifications to several of the other universal service programs, including those addressing the needs of low-income households and high-cost rural areas. There, as here, USTelecom supports appropriate reforms to ensure the efficient and effective use of universal service funds.

The Commission proposes various administrative measures that – if adopted – would unnecessarily discourage providers from participating in the modified E-Rate program. The Commission should not double the existing record retention requirement from five to "at least ten years," for applicants and providers participating in the E-Rate program. Such an approach would significantly increase costs for providers and applicants while producing no tangible benefits. The Commission also should not amend its rules to require that an officer of a service provider participating in the E-Rate Program sign certain forms submitted to USAC in support of an application for eligible services and any requests for payment. The proposed increase in certification requirements is onerous and will vastly increase the administrative burden for service providers participating in the E-Rate Program. Finally, there is no need for the Commission to require third-party audits for all E-Rate Program providers. A better alternative would be for the Commission to require such audits only for new providers participating in the E-Rate program.

The Commission should also carefully consider any proposed changes to its E-Rate funding rules. In instances where not entity, or only a single entity, responds to a Form 470 posting, the Commission should not adopt bright line rules that impose limits on the amount of discounts available in such situations, since it could unfairly penalize applicants in areas where there are limited numbers of service providers. The Commission should also not utilize E-Rate program funds for the deployment of wireless hotspots. In addition to being an inappropriate use of E-Rate funds, adoption of such a rule is an inefficient use of finite financial resources that has the potential to overlap with other Universal Service Fund programs administered by the Commission.

The Commission also should not engage in further price regulation, such as phasing in maximum per-megabit prices over time that are eligible for E-rate discounts, or setting program-wide per-megabit price guidelines or targets. Individual schools and libraries have unique needs, requirements and uses for E-Rate Program funded services. In addition, the providers behind these supported services may have distinctive networks and offerings that are subject to unique constraints within their respective markets. As such, pricing and terms for E-rate projects can vary, often making comparisons from school to school or library to library difficult, if not impossible.

USTelecom also supports efforts by the Commission to explore ways to enhance valuable public-private partnerships in this area, without undermining the important role of its gift rules. As the Commission is well aware, such constructive partnerships have been tremendously beneficial in various areas, including the E-Rate program. Finally, prior to increasing funding available to E-Rate Program participants as proposed, the Commission should first assess the impact of its comprehensive reforms. Given the comprehensive nature of the Commission's proposed reforms, combined with its recent decision to index the fund for inflation, it should take the time necessary to carefully and thoughtfully examine the potential impact of these reforms prior to making further adjustments to the E-Rate Program funding levels.

There are also several ways the Commission can streamline certain of its E-Rate administrative rules. For example, USTelecom supports the Commission's proposal to modify its process to permit schools and libraries to receive disbursements directly from USAC. Combined with its proposal to adopt specific invoice deadlines, this administrative measure will speed the disbursement of E-Rate Program funds to schools and libraries. The Commission, however, should not adopt rules requiring the publication of actual purchase prices for E-Rate services. Given that the underlying factors behind each project are numerous and variable, discrete data sets cannot and should not be used for the purpose of making broad generalizations about potential costs for a unique E-Rate funded project. In addition, providers may face issues with publishing such information due to the Commission's rules relating to customer proprietary network information (CPNI).

Finally, the Commission should not expand its E-Rate program support for dark fiber. USTelecom has commented at length as to why dark fiber is not eligible for support under the Communications Act as it is neither a telecommunications service, advanced telecommunications service nor an information service. Rather, it is merely a facility that has the potential to be used as part of a service when and if it is lit. As such, it cannot be included in the permissible uses of E-Rate Program funding and thus the Commission should not provide priority one support for the modulating electronics necessary to light leased dark fiber.

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COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] submits these comments in response to the Federal Communications Commission's (Commission) above-referenced Notice of Proposed Rulemaking (*Notice*).[2] Through its *Notice*, the Commission has initiated a comprehensive and thorough review and update of the schools and libraries universal service support program (the "E-Rate Program").

USTelecom agrees with Acting Chairwoman Clyburn's statement accompanying the *Notice* that, "E-rate is one of the [Commission]'s biggest success stories."[3] Broadband has fueled American learning opportunities exponentially. Educational materials and course instruction which previously could only be delivered in a classroom environment can now be obtained online. The broadband networks deployed by our member companies are expanding

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[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

[2] *See*, Notice of Proposed Rulemaking, *Modernizing the E-rate Program for Schools and Libraries*, 78 Fed Reg. 51597 (July 23, 2013) (*Notice*).

[3] *See*, Statement of Acting Chairwoman Mignon L. Clyburn, *Notice*.

school boundaries by enabling distance learning applications, providing all students – from rural communities to inner cities – access to high-quality courses and expert instruction, no matter the size of the school they attend or their geographic distance from their teacher.

USTelecom agrees that the challenge we face today is to modernize the program "to ensure that our nation's students and communities have access to high-capacity broadband connections that support digital learning while making sure that the program remains fiscally responsible and fair to the consumers and businesses that pay into the universal service fund."[4] The Commission's proposed reforms to the E-Rate Program follow similar modifications to several of the other universal service programs, including those addressing the needs of low-income households and high-cost rural areas. There, as here, USTelecom supports appropriate reforms to ensure the efficient and effective use of universal service funds.

I. PROPOSED ADMINISTRATIVE MEASURES WOULD BURDEN PROVIDERS AND APPLICANTS AND INCREASE E-RATE PROGRAM COSTS

The Commission proposes various administrative measures that – if adopted – would unnecessarily discourage providers from participating in the modified E-Rate Program. The Commission's proposed modifications include the significant extension of document retention periods and expanded certification requirements. USTelecom opposes adoption of these measures, since each would significantly increase costs for providers and applicants while producing no tangible benefits. There is also no need for the Commission to require third-party audits for all E-Rate Program providers. A better alternative would be for the Commission to require such audits only for new providers participating in the E-Rate Program.

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[4] *Notice*, ¶ 2.

A. The Commission Should Not Increase the Document Retention Periods from Five Years to a Decade.

The Commission should not double the existing record retention requirement from five to "at least ten years," for applicants and providers participating in the E-Rate Program.[5] As it has in other forums, the Commission once again bases its ten-year record retention requirement on the False Claims Act. As pointed out by USTelecom in its Petition for Reconsideration of the USF/ICC Transformation Order,[6] the False Claims Act is designed to ferret out fraudulent claims by government contractors, not to increase the recordkeeping expense of government contractors.[7] In fact, the False Claims Act imposes no affirmative record-keeping requirements on persons or entities submitting claims to the government.

Although the False Claims Act contains a ten-year statute of limitations,[8] this provision hardly warrants establishing an equivalent record retention obligation. Indeed, a statute of limitations period by which a claim must be brought and a recordkeeping period during which records must be maintained serve fundamentally different purposes – purposes that the Commission conflates in its *Notice*. Furthermore, the costs of maintaining and storing records for ten years is significant – costs that the Commission ignores and that greatly outweigh any

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[5] *Id.*, ¶ 295.

[6] *See*, Petition for Reconsideration, United States Telecom Association, WC Docket No. 10-90, pp. 22 – 24 (filed December 29, 2011).

[7] *See* 31 U.S.C. §§ 3729-33. The False Claims Act provides in part that "any person who… knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval…is liable to the United States Government for a civil penalty…" 31 U.S.C. § 3729(a)(1)(a).

[8] *See*, 31 U.S.C. § 3731(a)-(b).

purported benefit from having available records during the entire time that a person could assert a hypothetical False Claims Act claim.

The fact of the matter is, that in most instances service providers are saving E-Rate Program records between 6 - 10 years. The Commission's existing requirement is for service providers to maintain records 5 years *after* the last date of service. As a result, a service provider with a 5 year contract is required to maintain its records for an additional 5 years. Adoption of the Commission's proposal would therefore require service providers to retain such records for an inordinately prolonged period.

The ten-year document retention requirement is inconsistent with the Commission's existing five-year administrative limitations period for audits and investigations of universal service fund beneficiaries. According to the Commission, five years "appropriately balance[d] the beneficiary's need for finality and our need to safeguard the USF programs from waste, fraud, and abuse."[9]

A ten-year document retention requirement also significantly exceeds the period for maintaining documents under other federal programs. For example, five-year employment and call record retention requirements apply for Video Relay Services,[10] and other Commission

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[9] Report and Order, *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, 22 FCC Rcd 16372, ¶ 29 (Aug. 29, 2007). See 47 C.F.R. §54.320(a)-(b) (*Comprehensive Review Order*).

[10] *See*, Report and Order and Further Notice of Proposed Rulemaking, Second Report and Order, *Structure and Practices of the Video Relay Service Program*, 26 FCC Rcd 10898, ¶ 28 (July 28, 2011); Structure and Practices of the Video Relay Service Program, 26 FCC Rcd 5545, ¶¶ 85, 87 (2011).

record retention requirements extend for two years or less.[11] The unreasonableness of a ten-year record retention requirement is underscored by regulations implementing the Sarbanes-Oxley Act and the Equal Credit Opportunity Act that embody shorter record retention periods.[12]

The Commission's ten-year record retention requirement also contravenes the purpose of the PRA by maximizing the paperwork burden for USF recipients with little, if any, corresponding benefit. The costs of maintaining and storing records for ten years is significant – costs that greatly outweigh any purported benefit from having available records during the entire time that a person could assert a hypothetical False Claims Act claim. The Commission should therefore retain the historically sufficient five year retention period for the E-Rate Program, and not impose new and extensive burdensome requirements.

B. The Commission Should not Increase the Certification Requirements for the E-Rate Program.

The Commission should not amend its rules to require that an officer of a service provider participating in the E-Rate Program sign certain forms submitted to USAC in support of an application for eligible services and any requests for payment.[13] The proposed increase in certification requirements is onerous and will vastly increase the administrative burden for

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[11] *See, e.g.*, 47 C.F.R. § 64.2008(a)(2) (one year record retention of customer proprietary network information for telecommunications carriers); 47 C.F.R. § 42.6 (18 month record retention of billing records for common carriers); Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, 26 FCC Rcd 14557, ¶ 225 (2011) (two year record retention after a covered entity ceases to offer a product).

[12] 17 C.F.R. § 210.2-06 (seven-year retention of audit records); 12 C.F.R. § 202.12 (25-month retention for creditor applications); 15 C.F.R. § 14.53(b)-(d) (three-year retention for recipients of federal grants, which is extendable if audit commences during that time).

[13] *Notice*, ¶ 300.

service providers participating in the E-Rate Program. Moreover, the expanded certification requirements could potentially expose service providers to expanded liability under the False Claims Act. By so raising the administrative costs and risks of participation, the proposed certification requirements could discourage participation in the E-rate program and potentially lead to higher prices, all to the ultimate detriment of the program and the public interest.

By expanding the E-Rate Program certification requirements to officers of the service providers, the Commission will increase – by orders of significant magnitude – the time needed to complete the relevant forms. If service providers are required to review and obtain officer approval of the relevant forms to satisfy the proposed certifications, the time required to coordinate and to conduct review will dwarf the current projections of one hour by multiple levels.

Because the proposed certifications increase the administrative burden of participation, participation in the E-Rate Program will become more costly to service providers. Not only could service providers be forced to spend time monitoring the compliance of applicant schools and libraries, they could also be forced to modify their current compliance systems so as satisfy these proposed certifications. Moreover, the additional requirement of officer certification will increase the amount of resources and time necessary to conduct a review of the forms and relevant supporting documentation, further increasing participations costs.

Decreased participation in the program, coupled with increased costs of compliance for those service providers who remain in the program, could raise the costs of providing service across the board. Ultimately, higher prices do not serve the schools and libraries that depend on the E-Rate Program to provide service to students and the public.

C. The Commission Should Refrain From Implementing Excessively Burdensome Third-Party Independent Audits.

USTelecom supports efforts to maintain and enhance the integrity of the E-Rate Program through the use of audits, but such audit requirements need not be excessively burdensome or duplicative to be effective. To begin with, both applicants and providers are already subject to robust audit mechanisms within the E-Rate Program, through which the Commission today monitors and identifies problematic issues with specific applicants and/or providers. It is unclear that any additional audit process is necessary.

The Universal Service Administrative Company (USAC) already implements standard auditing practices throughout the E-Rate process. For instance, when a service provider submits an invoice to USAC for reimbursement, randomly selected invoice lines receive extra review and scrutiny by USAC staff. USAC staff will often request supporting documentation, such as invoices, contracts, detailed quotes, from the service provider. Additionally USAC staff will request from the applicant a Service Certification to validate that services were given and the school has paid their portion of the bill. This double validation ensures that E-Rate Program funds are not being misappropriated.

In addition, USAC operates both the Beneficiary and Contributor Audit Program (BCAP) and Payment Quality Assurance (PQA) Program.[14] The Commission acknowledges in its *Notice* that BCAP is one of the "most important tools for identifying and deterring program rule

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[14] *See*, USAC Schools and Libraries (E-Rate) website, *Program Integrity* (available at: http://www.usac.org/sl/about/program-integrity/audits.aspx) (visited September 12, 2013).

violations, and for recovering funding that has been improperly disbursed."[15] Under the BCAP, audit sites – which can include beneficiaries and service providers – are randomly selected, and the selection process is designed to provide a wide variety of entities with regard to applicant size, discount percentage, and geographic location. Selection for an audit is not necessarily an indication that USAC believes problems exist. Moreover, the audits can be conducted by a wide range of specialists, including USAC's internal audit staff, the FCC Office of Inspector General, Inspectors General of other federal agencies, or a firm under contract to USAC or the FCC.[16]

Similarly, under the PQA program, USAC assesses specific payments made to select beneficiaries in all four support mechanisms, including the E-Rate Program, to determine if these payments were made in accordance with Commission rules. Using results of these assessments, USAC calculates estimates of improper payment rates and provides this information to the Commission. Participation in the PQA is required as a condition of receiving USF support, and beneficiaries are subject to strict compliance timelines and procedures.[17] Importantly, within 90 days of submitting materials, participants receive results of their specific assessment, thereby ensuring constructive feedback to all E-Rate Program stakeholders.

To the extent the Commission nevertheless implements independent third-party audits, USTelecom proposes that such third-party audits only be used when a new provider is proposing to participate in the E-Rate Program. By focusing on new providers, the FCC will be able to

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[15] *Notice*, ¶ 314.

[16] *See*, USAC Schools and Libraries (E-Rate) website, *Program Integrity, BCAP* (available at: http://www.usac.org/sl/about/program-integrity/bcap.aspx) (visited September 12, 2013).

[17] *See*, USAC Schools and Libraries (E-Rate) website, *Program Integrity, PQA Program* (available at: http://www.usac.org/sl/about/program-integrity/pqa.aspx) (visited September 12, 2013).

confirm that the provider has the necessary systems in place in order to comply with the requirements of the E-Rate Program. The Commission could require such independent audits for a brief, interim period, until such time as the new provider has an established record of compliance with E-Rate Program obligations.

II. THE COMMISSION SHOULD CAREFULLY CONSIDER ANY PROPOSED CHANGES TO ITS E-RATE FUNDING RULES.

A. The Commission Should Avoid Bright Line Rules in Situations Where No Entity, or Only a Single Entity, Responds to a FCC Form 470 Posting.

USTelecom agrees with the Commission that the adoption of bright line rules that impose limits on the amount of discounts available in certain situations could unfairly penalize applicants in areas where there are limited numbers of service providers.[18] The Commission specifically references instances in which no entity, or only one entity, responds to a FCC Form 470 posting, and seeks comment on how best to ensure that applicants select cost-effective services.[19] Given the importance of consistent and standard rules for the E-Rate bidding process, the Commission should refrain from introducing bright line rules that may apply in only limited circumstances.

B. The Commission Should Not Utilize E-Rate Program Funds for the Deployment of Wireless Hotspots.

As a steward of public funds that are to be directed towards various aspects of broadband deployment, the Commission should not permit schools and libraries to utilize E-Rate Program funds to install, deploy and maintain wireless hotspots for use by surrounding communities. In

[18] *Notice*, ¶ 204.
[19] *Id.*, ¶ 203.

addition to being an inappropriate use of E-Rate funds, adoption of such a rule is an inefficient use of finite financial resources that has the potential to overlap with other Universal Service Fund (USF) programs administered by the Commission.

Given the acknowledgement throughout the *Notice* that the high demand for limited E-Rate funds poses a significant challenge,[20] it makes little sense for the Commission to propose their use for non-educational purposes. By adopting such a rule, the Commission would effectively syphon off the already limited public funds dedicated to E-Rate Program services for non-E-Rate purposes. The deployment and maintenance of wireless hotspots for use by surrounding communities is an effort best suited for addressing through other Commission programs such as the Connect America Fund (CAF). In fact, when the Commission recently reformed the USF through its CAF order, it stated that it was seeking to "establish a framework to distribute universal service funding in the most efficient . . . manner possible."[21] The Commission also concluded that "it would not be in the public interest to provide additional support to carriers providing duplicative services."[22]

As a basis for this proposal, the Commission relies on its previous decision in its *Sixth Report and Order* to allow schools to open their facilities to the general public to utilize services

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[20] *See e.g., Notice*, ¶ 9 (stating that the "need for E-rate reform is also clear given the extraordinary demand for existing E-rate support," and that "demand for funds has exceeded the cap every year since the inception of the program," in 1997); *see also*, ¶ 63 (stating that "for the first time in E-rate program history, in funding year 2012, estimated demand for priority one funding alone exceeded the funding cap;" and that "the trend in priority one demand indicates that, absent reforms, perhaps as soon as funding year 2014, the ability to fund priority one request at all discount levels will be threatened.").

[21] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd 17663, FCC 11-161, ¶ 1 (released November 18, 2011) (*USF Order*).

[22] *USF Order*, ¶ 509.

supported by E-rate when classes are not in session.[23] However, there are significant differences between the Commission's previous decision and its current proposal. The Commission's decision in its *Sixth Report and Order* allowed schools to permit the use of their services at the school's facility that would otherwise be under-utilized or idle after school hours. The Commission's proposal to permit the use of E-Rate Funds for the construction of wireless hotspots to serve the broader community, however, would obligate E-Rate Funds for non-educational purposes off of school grounds. Such a use of limited resources should not be permitted, especially given the availability of alternate federal funds dedicated for such purposes.

C. Given the Unique Nature of Individual E-Rate Program Projects, the Commission Should Not Introduce Per-Megabit Price Guidelines or Targets.

Individual schools and libraries have unique needs, requirements and uses for E-Rate Program funded services. For example, certain schools may be more heavily dependent on distance learning capabilities, or the streaming of educational videos, while others may have more basic needs, such as e-mail or access to web-based online content. Similarly, the providers behind these supported services may have distinctive networks and offerings that are subject to unique constraints within their respective markets. As such, pricing and terms for E-rate projects can vary, often making comparisons from school to school or library to library difficult, if not impossible.

For these reasons, the Commission should not engage in further price regulation, such as phasing in maximum per-megabit prices over time that are eligible for E-rate discounts, or setting program-wide per-megabit price guidelines or targets as proposed in the *Notice*. Such an

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[23] *Notice*, ¶ 319.

approach fails to recognize the unique needs and circumstances behind any given E-Rate funded project, and fails to account for the network realities in any given market.

D. The Commission Should Encourage Reform its Gift Rules to Facilitate the Participation of Private Entities in E-Rate Programs.

USTelecom is supportive of encouraging increased participation by private entities in E-Rate Programs, within its current legal framework. As the Commission is well aware, such constructive partnerships have been tremendously beneficial in various areas, including the E-Rate Program. At times, however, the full benefits of these public-private partnerships may be hindered by the Commission's E-Rate Program gift rules. This is not to say that the Commission's gift rules do not play in important role within the E-Rate Program. Rather, USTelecom supports efforts by the Commission to explore ways to enhance valuable public-private partnerships in this area, without undermining the important role of its gift rules.

E. The Commission Should Assess the Impact of Any Implemented Reforms Prior to Changing E-Rate Program Funding.

In its *Notice*, the Commission emphasizes that it seeks to "comprehensively modernize" the E-Rate Program through improved efficiency and administration.[24] In furtherance of this effort, large portions of the *Notice* focus on ways the Commission can maximize the cost-effectiveness of E-Rate Program funds and streamline its administration.[25] However, prior to increasing funding available to E-Rate Program participants as proposed,[26] the Commission should first assess the impact of its comprehensive reforms.

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[24] *Notice*, ¶ 11.
[25] *Id.*, ¶¶ 177 – 269.
[26] *Id.*, ¶¶ 172 – 176.

In addition, the Commission's concerns over funding levels have already been addressed to a certain degree through its recent decision that the cap be indexed to inflation beginning in 2010.[27] As a result, for funding year 2013 the E-rate fund is capped at just over $2.38 billion.[28] Given the comprehensive nature of the Commission's proposed reforms, combined with its recent decision to index the fund for inflation, it should take the time necessary to carefully and thoughtfully examine the potential impact of these reforms prior to making further adjustments to the E-Rate Program funding levels.

III. THE COMMISSION SHOULD STREAMLINE CERTAIN OF ITS E-RATE ADMINISTRATIVE RULES

A. The Commission Should Adopt its Proposal to Streamline the Invoicing and Disbursement Procedures in the E-Rate Program.

USTelecom supports the Commission's proposal to modify its process to permit schools and libraries to receive disbursements directly from USAC.[29] Combined with its proposal to adopt specific invoice deadlines, this administrative measure will speed the disbursement of E-Rate Program funds to schools and libraries. USTelecom agrees with the Commission's assessment that removing the service provider as the "pass-through for the reimbursement of funds," would simplify the E-Rate Program disbursement process for applicants and service providers by removing an unnecessary and time-consuming step in the process.[30] This proposal for USAC to reimburse schools and libraries directly should be expanded to include the Service

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[27] *Id.*, ¶ 59.
[28] *Notice*, ¶ 59.
[29] *Id.*, ¶¶ 259 – 262.
[30] *Id.*, ¶ 261.

Provider Invoice (SPI) process in addition to the Billed Entity Applicant Reimbursement (BEAR) process.

B. The Commission Should Not Adopt Rules Requiring the Publication of Actual Purchase Prices.

Individual projects funded through the E-Rate Program are subject to numerous variables that are often unique to the particular applicant. In addition to the number and type of providers available in any given area, such variables can include such factors are unique geographic circumstances, population density, existing network capacity, and available infrastructure, such as reasonable access to poles and conduits. In addition, individual schools and libraries often have different needs for their respective services.

For this reason, any data utilized by the Commission or others should inform, not dictate, the evaluation and assessment of specific E-Rate funded projects. Given that the underlying factors behind each project are numerous and variable, discrete data sets cannot and should not be used for the purpose of making broad generalizations about potential costs for a unique E-Rate funded project.

Moreover, the Commission should refrain from adopting rules that would make available the prices applicants are paying for E-rate supported services.[31] Providers may face issues with publishing such information due to the Commission's rules relating to customer proprietary network information (CPNI). CPNI is defined as "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made

[31] *Id.*, ¶ 196.

available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."[32] As the Commission has previously noted, CPNI includes information such as the services purchased by the consumer and billing information. As such, providers may not be in a position to publicly release information relating to services they are offering to schools and libraries.

Moreover, much of the information that the Commission proposes to publish is often made publicly available elsewhere through various mechanisms. For example, many public schools and libraries publish contracts utilizing E-Rate Program funds.[33] To the extent such information is not available, it can be acquired through the Freedom of Information Act process. Ultimately, any requirement to publish bid data – which is already available through various forums – would result in additional administrative burdens within the E-Rate program, thereby undercutting the Commission's goal of streamlining its administrative processes.

IV. THE COMMISSION SHOULD NOT EXPAND ITS E-RATE PROGRAM SUPPORT FOR DARK FIBER

USTelecom has commented at length as to why dark fiber is not eligible for support under section 254(h)(1)(A) or (h)(2)(A) of the Act[34] as it is neither a telecommunications service,

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[32] 47 U.S.C. § 222(h)(1).

[33] *See e.g.*, State of Washington, Office of Superintendent of Public Instruction website, *E-Rate Program* (http://www.k12.wa.us/EdTech/E-rate/default.aspx#contracts) (visited September 11, 2013); Wisconsin Department of Public Instruction website, *Wisconsin E-Rate Information* (http://pld.dpi.wi.gov/pld_erate) (visited September 11, 2013); Virginia Information Technologies Agency website, E-*Rate Funding Year 2013* (http://www.vita.virginia.gov/services/default.aspx?id=5052) (visited September 11, 2013).

[34] 47 U.S.C. § 254(h)(1)(A), (h)(2)(A).

advanced telecommunications service nor an information service.[35] Rather, it is merely a facility that has the potential to be used as part of a service when and if it is lit. As such, it cannot be included in the permissible uses of E-Rate Program funding and thus the Commission should not provide priority one support for the modulating electronics necessary to light leased dark fiber.[36]

Given that dark fiber should not receive support under the E-Rate Program, it makes little sense for the Commission to further expand the use of limited E-Rate funds for the purpose of the modulating electronics necessary to light leased dark fiber. Neither dark fiber nor the modulating electronics constitute a telecommunications service, advanced telecommunications service or an information service. As such, they are not eligible for support under the E-Rate Program.

V. CONCLUSION

The Commission should refrain from implementing certain of its proposed administrative measures that would burden providers and applicants and increase E-Rate program costs. It should not increase the document retention period from five to ten years, and should refrain from implementing excessively burdensome third-party independent audits. The Commission should also not increase its existing certification requirements.

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[35] *See e.g.*, Reply Comments of USTelecom, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, pp. 5 – 6 (submitted May 20, 2013); *see also*, Petition for Reconsideration and Clarification of USTelecom, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, pp. 2 – 6 (submitted April 1, 2013).

[36] *Notice*, ¶ 70. The Commission is incorrect to assert that dark fiber is a "service." Absent electronics, additional power and conduit infrastructure at the end-user's premises, regeneration equipment to ensure the integrity of the broadband signal, among other things, dark fiber cannot enhance access to advanced telecommunications and information services.

The Commission should also carefully consider any proposed changes to its E-Rate funding rules. It should avoid bright lines in situations where no entity, or only a single entity responds to a FCC Form 470 posting, and it should not utilize E-Rate funds for the deployment of wireless hotspots. Given the unique nature of individual E-Rate program projects, the Commission should not introduce per-megabit price guidelines or targets. It should encourage reforms to its gift rules to facilitate the participation of private entities in E-Rate programs and should assess the impact of any implemented reforms prior to changing E-Rate program funding.

The Commission should also adopt its proposal to streamline the invoicing and disbursement procedures in the E-Rate program. Additionally, it should not adopt rules requiring the publication of actual purchase prices. Finally, the Commission should not expand its E-Rate program support for dark fiber.

Respectfully submitted,

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